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SAN DIEGO FLOOD BUSTERS, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO FLOOD BUSTERS, INC.,

Plaintiff,

v.

CERTIFIED RESTORATION, INC., a
California corporation; and MICHAEL
FAHOURIS, an individual.

Defendants.

CASE NO. **'15CV2334 CAB WVG**

**COMPLAINT FOR TRADEMARK
INFRINGEMENT**

Plaintiff SAN DIEGO FLOOD BUSTERS, INC. (“FLOOD BUSTERS”) alleges as follows:

1. FLOOD BUSTERS is a California corporation in good standing having its principal place of business in San Diego County engaged in the business of commercial water damage restoration in this County and elsewhere in the State of California.

2. Plaintiff is the sole owner and registrant of that certain primary register Federal service mark, number 2,571,679, of the mark Flood Masters® for commercial water damage restoration services (“The Mark”) having a date of first use in commerce in 2002. A true specimen of The Mark is attached as Exhibit A to this Complaint. The elements of 15 U.S.C. section 1065 having been satisfied, The Mark is incontestable within the meaning of such section and of 15 U.S.C. section 1115(b).

1 3. Plaintiff is informed and believes and thereon alleges that Defendant CERTIFIED
2 RESTORATION, INC., is a California corporation doing business in San Diego County,
3 California, who, without the consent of the Plaintiff, has and continues to offer water damage
4 restoration services in San Diego County under the name "FLOOD MASTERS." Plaintiff is
5 informed and believes and thereon alleges that the form of the business so operated is a
6 corporation owned and/or controlled by such individual Defendant.

7 4. Plaintiff is informed and believes and thereon alleges that Defendant MICHAEL
8 FAHOURIS is an individual resident of San Diego County, California, who, without the consent
9 of the Plaintiff, has and continues to offer water damage restoration services in San Diego County
10 under the name "FLOOD MASTERS." Plaintiff is informed and believes and thereon alleges that
11 the form of the business so operated is a corporation owned and/or controlled by such individual
12 Defendant.

13 5. The Court has subject matter jurisdiction under 15 U.S.C. section 1116, 15 U.S.C.
14 section 1121 and under 28 U.S.C. section 1331.

15 6. Venue is proper in this District in that all acts of infringement complained of
16 herein occurred in this District and the Defendants reside and do business in this District.

17 7. Plaintiff is informed and believes and thereon alleges that, commencing on a date
18 unknown to Plaintiff in calendar year 2014 and continuing to the present date, without the consent
19 of Plaintiff, Defendants used in commerce reproductions and copies of The Mark and a certain
20 style of Offending Trade Dress in connection with the sale, the offering for sale, the distribution,
21 and the advertising of commercial water damage restoration services in San Diego County in
22 manners likely to cause confusion with The Mark and Protected Trade Dress. Plaintiff is
23 informed and believes and thereon alleges that said Defendants' usages were, and continue to be,
24 by multiple methods including, without limitation, by placing on the internet advertisements and
25 websites under the name FLOOD MASTERS so that parties desiring commercial water damage
26 restoration services from the Plaintiff instead reach said Defendants through internet solicitation
27 or by calling, among other numbers, (619) 234-2500; and, in addition, hold themselves out under
28

1 such name or names and trade dress in advertisements and by one or more uniforms, order forms,
2 contracts, business cards, leaflets, flyers and/or stationery ("Infringing Articles").

3 8. Plaintiff is informed and believes and thereon alleges that, in or about 2014 and
4 continuing to the present date, without the consent of the Plaintiff, said Defendants reproduced,
5 copied and merely colorably imitated The Mark and Protected Trade Dress of the Plaintiff and in
6 the manners alleged in preceding paragraph 7 applied such reproductions, copies or colorable
7 imitations to the Infringing Articles and to advertisements intended to be used in commerce in
8 connection with the sale, offering for sale, distribution and advertising of services and in a
9 manner likely to cause confusion with The Mark

10 9. Defendants' usages, as alleged, constituted uses confusingly similar and merely
11 colorable imitations of Plaintiff's Mark and constituted infringement.

12 10. Plaintiff is informed and believes and thereon alleges that the infringements by
13 Defendants were willful.

14 11. Plaintiff suffers irreparable damage for which damages at law are inadequate from
15 the continued infringements by said Defendants, as alleged. Pursuant to 15 U.S.C. section 1116,
16 provisional and permanent injunctions should issue to prohibit continuation of the Infringing
17 Method and all uses in commerce by said Defendants of The Mark including the Protected Trade
18 Dress and of all confusingly similar expressions for the marking, sale, offering for sale,
19 distribution and advertisement of commercial water damage repair services, and commanding the
20 immediate obliteration of such matter where appearing on all Infringing Articles. Where and to
21 the extent such marks or colorable imitations or confusingly similar versions appear on articles of
22 personnel attire, contracts, order forms, letterhead, leaflets, flyers and the like, and upon
23 Infringing Articles, said Infringing Articles should and must be made the subject of an order for
24 delivery and destruction under 15 U.S.C. section 1118. Plaintiff is informed and believes that
25 said Defendants continue to employ in commerce and continue to secure commercial water
26 damage restoration business by internet websites and internet advertisements published
27 throughout San Diego County, each of which identifies the telephone numbers and website
28 information for customers to utilize.

12. As part of such injunctions, said Defendants must be commanded to direct at their expense all sources of telephone service within San Diego County to automatically redirect all telephone calls to all such infringing use telephone numbers in such running telephone directory listings, advertisements and directory assistances to legitimate numbers of Plaintiff; or, absent compliance forthwith with such mandate, appointing any Clerk or Deputy Clerk of this Court as agent for such Defendants to instruct all such Telephone Service Providers to disconnect permanently all Diversion Phone Numbers with no forwarding numbers.

13. In addition, as part of such injunctions, said Defendants must be commanded to direct at their expense all internet service providers within San Diego County to automatically redirect all website inquiries (including, but not limited to, www.floodmasterssd.com and www.certifiedrestorationinc.com) to Plaintiff (www.floodmasters.com); or, absent compliance forthwith with such mandate, appointing any Clerk or Deputy Clerk of this Court as agent for such Defendants to instruct all such Internet Service Providers to disconnect permanently all Defendants' websites identified above.

14. Plaintiff has been damaged in an amount to be proven at trial by lost profits and lost overhead recoveries from commercial water damage restoration jobs diverted from Plaintiff by said Defendants using Plaintiff's Mark and goodwill. Plaintiff is entitled to treble the actual damages proven and to costs. Alternatively, Plaintiff is informed and believes and thereon alleges that said Defendants' profits in and since January 2015 have been attributable to the infringing uses, as alleged, and the amount of which profits are presently unknown to Plaintiff but will be proven at time of trial. Plaintiff is entitled to recover money damages against said Defendants in said amount of said Defendants' profits to be proven at time of trial upon proof by Plaintiff of Defendants' gross sales, less any amounts proven by the Defendants as elements of cost or deduction. Plaintiff is entitled to an award of attorney fees for prosecution of this action pursuant to 15 U.S.C. section 1117(a).

PRAYER

WHEREFORE PLAINTIFF DEMANDS ENTRY OF JUDGMENT AGAINST
DEFENDANTS FOR THE FOLLOWING RELIEF:

1 A. For injunctive relief restraining and enjoining said Defendants from making any
2 uses in commerce of all or any portions of The Mark and of any matter confusing similar thereto
3 (specifically including prohibiting use of “FLOOD MASTERS” and the Offending Trade Dress)
4 relating to commercial water damage services and which injunction:

5 i. Mandates that said Defendants at their sole expense instruct all sources of
6 telephone service within San Diego County to automatically redirect all telephone calls to
7 all such infringing use telephone numbers in such running telephone directory listings,
8 advertisements and directory assistances to legitimate numbers of Plaintiff; or, absent
9 compliance forthwith with such mandate, appointing any Clerk or Deputy Clerk of this
10 Court as agent for such Defendants to instruct all such Telephone Service Providers to
11 disconnect permanently all Diversion Phone Numbers with no forwarding numbers;

12 ii. Mandates that said Defendants at their sole expense instruct all Internet
13 Service Providers in San Diego County to automatically redirect website inquiries to
14 Plaintiff’s website; or, absent compliance forthwith with such mandate, appointing any
15 Clerk or Deputy Clerk of this Court as agent for such Defendants to irrevocably instruct
16 all such Internet Service Providers to disconnect permanently all of said Defendants’
17 websites;

18 iii. Restrains and enjoins said Defendants from performing any commercial
19 water damage restoration services for any person or entity who contacted said Defendants
20 at any one or more of the infringing websites or to whom was furnished or exhibited an
21 Infringing Article;

22 iv. Restrains and enjoins said Defendant from placing or making any further
23 advertisements, websites, internet solicitations or telephone listings under the names
24 “FLOOD MASTERS” or that use the Offending Trade Dress or any words, symbols or
25 device confusingly similar to The Mark; and,

26 v. Commands the delivery up by said Defendants and/or seizure by Marshals
27 and destruction of all Infringing Articles.
28

1 B. For a money judgment against said Defendants in the amount of the Defendants'
2 profit attributable to the infringing uses, or the Plaintiff's damages, whichever are greater, and
3 treble the actual damages on account of willful infringement;

4 C. For recovery of attorney fees against said Defendants in not less than the default
5 schedule of the courts for the same; and,

6 D. And for costs of suit and such other relief as may be requested by the Plaintiff and
7 to which it is entitled at law or in equity.

8
9 Dated: October 16, 2015

LAW OFFICES OF ROBERT C. MARTINEZ

10
11 By:



12 Robert C. Martinez
13 Attorneys for Plaintiff
14 SAN DIEGO FLOOD BUSTERS, INC.
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EXHIBIT 1



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Typed Drawing

Word Mark	FLOOD MASTERS
Goods and Services	IC 037. US 100 103 106. G & S: Water damage restoration services. FIRST USE: 19920930. FIRST USE IN COMMERCE: 19920930
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	78085087
Filing Date	September 22, 2001
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	February 26, 2002
Registration Number	2571679
Registration Date	May 21, 2002
Owner	(REGISTRANT) San Diego Flood Busters, Inc. CORPORATION CALIFORNIA 9943 Prospect Ave Santee CALIFORNIA 92071
Attorney of Record	Karl M. Steins
Prior Registrations	1475320;1918357
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FLOOD" APART FROM THE MARK AS SHOWN
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20120517.
Renewal	1ST RENEWAL 20120517